

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1406 OF 2019

Girish @ Sonu Narendra Thakur and Anr.] Petitioners

Vs.

Children Educational Uplift Society]

Through its Chairman and Secretary]

and others.] Respondents

.....

Mr. Pradeep D. Dalvi, learned Counsel for the Petitioners.

Mr. Haresh Motwani a/w Sarika Patel, for Respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 4TH MARCH, 2019.

P.C.

Heard Mr. Dalvi, learned Counsel for the petitioner and Mr. Motwani, leaned Counsel for respondent No.1 at length.

2. This Petition takes exception to the order dated 7th August, 2018 passed by the Civil Judge, Junior Division, Ulhasnagar below Exhibit 1 in R.C.S No.476 of 1996. By that order, the learned trial Judge dismissed the suit for want of prosecution.

3. Order-IX, Rule-4 of the Code of Civil Procedure, 1908 (for short 'C.P.C') lays down that where the suit is dismissed under Rule 2 or Rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside. As the suit is dismissed in default, the petitioner/plaintiff is at liberty to apply before the trial Court for setting aside the order of dismissal. Hence, Petition is disposed of. All contentions of the parties are expressly kept open.

[R.G. KETKAR, J.]